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How Some Lawyers Have Increased Their Law Office Income

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HOW SOME LAWYERS HAVE INCREASED THEIR LAW OFFICE INCOME*

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There has been no sham in my hesitancy as a lawyer from the distant Southwest in presuming to suggest to New York lawyers how they might increase their average charges to clients. But these same observations, with varying emphases, have been presented in articles and books and speeches of others; and, as on other recent occasions, I am willing to repeat these observations again and yet again in the hope that self-analyses by lawyers as to their fees and their office practices relating to their fees will be encouraged.

At the midwinter meeting of the Wisconsin Bar Association last February, I presented these views and at that time presented to those present a brief bibliography so that any of them who wished to do so, could study his own problems more carefully and in more detail by reading the articles and books that I recommended. A copy of that bibliography is appended at the bottom of this article. Let me urge all who read this article to reach his own conclusions based upon such a study of the more complete material available rather than based upon the terse summaries of some of the data that I present here.

The Wisconsin Bar Association has since placed in the hands of each of its members a four page outline by which every lawyer can more readily calculate what his average charge per hour of professional service should be, that figure being the basic point of departure which as a matter of common sense he must know before determining to what extent circumstances involving any specific charge he is making, should be at a higher or lower rate of compensation. At my request the Wisconsin outline has been presented to you immediately following this article.

In order to emphasize my points I desire first to present, in brief tabular form, some statistics from the latest decennial census of the federal government:

The mean average net income by size of the city or town in which the physician or lawyer is located, of those whose major income came from independent practice, in 1949:

Population	*Physicians*	*Lawyers*
Under 1,000	$ 7,109	$ 3,694
1,000 to 2,499	8,732	4,708
2,500 to 4,999	11,228	5,060
5,000 to 9,999	11,624	5,516
10,000 to 24,999	12,134	6,350
25,000 to 49,999	12,812	6,236
50,000 to 99,999	13,186	8,501

*Reprinted from the New York State Bar Bulletin for February, 1954.

100,000 to 249,999	13,110	7,332
250,000 to 499,999	14,276	8,348
500,000 to 999,999	13,161	10,057
1,000,000 and over	10,661	10,625

These figures are after increases in average net income, 1949 over 1929:

For all U. S. earners	109%
For all U. S. unsalaried physicians	125%
For all U. S. unsalaried lawyers	46%

In fact, the decreases for the first of these two decades for physicians and lawyers have been more than offset during the second decade.

The average annual income for each year stated, was:

Year	*All Physicians*	*All Lawyers*
1929	$ 5,224	$5,534
1941	4,441	4,507
1947	11,058	7,532
1951	13,432	8,730

The percentage of increase of the number of physicians and the number of lawyers during the last ten year period is much less than during the twenty year period. During the 1939-49 decade, our increase in population nationally was 14.5%, of physicians 15.2%, of lawyers 11.1%. As a profession we are attracting young men at less than the national rate of growth. As a profession we are sharing per lawyer, on an average, less of the increasing national income. And yet our friends the physicians have gained greatly, especially in the last decade; they have capitalized on, as the individual physician has made use of, the superior facilities of his professional organizations for economic as well as professional research.

To my mind, the most important single lesson which the lawyers of America can learn from the economic studies of our profession that have recently been made as a part of the Survey of the Legal Profession, is graphically presented in a brief table showing the extent to which American non-salaried lawyers in 1949 were practicing alone and the financial penalty, on the average, that each such lawyer paid for his independence from partners:

Practicing solo	73.6%	$ 5,759
As member of a firm of two	14.8%	8,030
As member of a firm of three	4.9%	12,821
As member of a firm of four	2.1%	16,614
As member of a firm of from five to eight	3.4%	20,467
As member of a firm of nine or more	1.3%	27,246

One of every seven physicians in America in 1949 practiced in a partnership with two or more in the firm. The average net income of that one physician in a partnership with one or more partners was $17,772. The average net income of the other six physicians without a partner was $10,895.

From these statistics no one should attempt to reach a quick conclusion as applicable to himself. The proper answer for each individual lawyer is not based primarily on statistics. But the trends, of which we have all been doubtless aware, without statistical support of our views, seem doubly clear:

> That physicians are making more than lawyers. One important reason for this, in my opinion, is that the physicians are better advised on the economics of their profession and because, accordingly, on an average, they bill their patients more regularly, more promptly and more surely in relation to the time and effort devoted by them to the service rendered.
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> That physicians and lawyers make more money net from their practice when located in larger towns and in cities. But these differences seem to me in all probability to be offset, or at least largely so, by differences in costs of living in their respective communities.
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> That far greater differences in income of physicians and of lawyer are attributable to the decision whether to practice alone or with partner or partners.

It has amazed me to examine the statistics as to the proclivities of lawyers in various states for entering into partnerships. In New York and in New York City, in particular, the percentage of non-salaried lawyers not a member of any partnership is higher than the national average. The state where there are proportionately more partners in the practice of law than any other is Iowa. That state, Louisiana, Kansas and Arizona are the only states that have more than thirty-five per cent of their non-salaried lawyers practicing with partners. Eleven more states have more than thirty per cent practicing non-salaried lawyers practicing with partners, and one of these is Texas. Though Texans generally bear a reputation of being independently-minded and I would have guessed before reading the statistics that the percentage of lawyers practicing law solo in Texas would be higher than in New York, the opposite is true.

Advantages of a Partnership

Of course, there are many advantages other than financial that a lawyer may gain in having at least one partner. If the advantage were solely financial it would seem to be of less importance to the rest of us practicing law and that all of us might well feel that each lawyer should be urged to make his own decision freely.

But in my opinion the quality of service that a partnership of

two lawyers can render to its clients is superior to the quality of service that can be rendered to his clients by either of the partners. If this be true, all of us as lawyers desirous of improving the reputation of our profession for service, has an interest in reducing the percentage of solo practitioners in the law.

Of course the occasions are frequent where two heads are better than one. The background of two partners of varying experience and different attitudes and different approaches to the same problems, time and time again demonstrates this very important fact.

Even in the simplest of offices, a fair and equitable division of work often involves one partner usually taking all or most of one type of work in the office and another partner taking all or most of another type of work. Even in a two-man office there is some tendency toward that division of work which will give to the firm the benefit of the repetitive experience in that type of work of the one rendering the service. The law is so complex and has so many fields where proficient lawyers now are specializing, that it is extremely difficult for the solo practitioner to keep up in every field and to advise his clients on any subject without research applicable to that client alone. The lawyer who can handle recurrent problems of the same type from time to time has an advantage over the lawyer who cannot do that.

Teamwork always inspires best efforts.

The ability for handling legal matters for clients more promptly and in a more orderly fashion certainly can be achieved to a greater extent in a two-lawyer office than by the solo practitioner. All other work of a solo practitioner suffers during periods when he is engaged in trial of one lawsuit or in monopolizing preparation therefor; during his absences from his practice on vacations or on account of illness or for attendance at bar meetings or other reasons. When he has an immediate emergency for each of two clients, each requiring exclusive attention to his emergency, the solo practitioner is faced with a dilemma that requires him to choose to serve one to the exclusion of the other. Conceding that in any partnership, such interruptions in the service by the partner whose service the client primarily expects, will involve some delays and some inconveniences to the client as well as to the firm, it would seem very clear that in a two-partner firm these causes for delay so often irksome to a client are greatly reduced.

Of course, the disadvantages of becoming a partner in the practice of law with another lawyer, are dependent upon the professional abilities of the two and their personal characteristics. The disadvantages may well outweigh the advantages. But where one professionally able to carry his share of the work and to do it well can be found, the disadvantages would seem clearly to be outweighed. I am told that there has been widespread reluctance by individual lawyers as to law partnerships because of the general feeling that if one has a partner he should be an equal partner.

Equality in experience, proficiency, productivity and resulting income for the firm is seldom achieved. Frequently partnerships are equal because of the reluctance of both partners to consider bases for inequality that can be readily computed and when computed readily agreed upon by them both.

THE IMPORTANCE OF DAILY RECORDS

It is for this reason above all others, that I want to urge upon all lawyers who will do so, that they keep a daily and accurate list of all professional services rendered and of the time devoted to each. Daily time sheets can be, and as I see it, in their best form are very simple. With such a record what has been done for every client by each partner is clearly recorded and the one who later drafts the bill to be submitted to the client cannot unintentionally overlook what his partner has done, or by forgetfulness minimize what he himself has done. My own experience and the experience of many others with whom I have discussed the matter, demonstrate that any statement prepared by a solo practitioner or by a partner who alone has devoted time and effort to the service covered by a bill that is being drafted who does not have access to such a record of what has been done and when, and at what effort, more frequently than not is too low, for the attorneys are prone to underestimate their own time and effort. This is especially true, if the bill relates to services not rendered during the month then current but over a period of months.

Moreover, small matters quickly completed and closed are frequently overlooked by the practitioner who has not made a record of his time devoted to them. The client who has called upon an attorney for a service promptly performed expected to pay a fee for that service, doubtless. The physician who keeps a record of every call at the office or on the patient or by phone and who makes a charge for every call does not overlook the relatively unimportant services that he has rendered. The lawyer who keeps no systematic record of how he has devoted his time proverbially does.

If the client to whom no bill is sent is a new client, he may well consider that the lawyer who does not bill him because of the lawyer's oversight did not appreciate the employment. Any client overlooked in the rendition of a bill or otherwise is prone to seek his professional service elsewhere.

Many fee charges of many lawyers are contractual and the service rendered under the contract will be paid at the contractual rate whether the time record is preserved or not. But in such matters, to, it is equally imperative that the time record be preserved and analyzed and that it be determined in the light of that analysis whether the employment was profitable or unprofitable. How otherwise can a lawyer intelligently ask for an increase in a retainer or an increase in a daily charge for particular services such as a day in court?

As a basis, therefore, for a consideration of what fees shall be charged and how much should be charged on each matter, I

want to urge that every lawyer, the solo practitioner and those with partners, should maintain a record of what he does and for whom from day to day. Analysis and summaries of these day to day records can be made for the lawyer by an office secretary or clerk. Some such analyses and the statistics from them become complicated in larger firms. This need not be so. For as the basis for departure, from which every fee to be charged will be increased or decreased as other circumstances may justify, at least a total of time devoted by every lawyer in the office to the matter for which the bill is submitted should be prepared and carefully considered.

This perhaps is being done in New York to a greater extent than I assume. But in 1949 I made a survey of the practices of every law firm in Texas in which seven or more lawyers were employed, including partners and associates. Of the thirty-two Texas firms whose practices as to daily time sheets were then considered, I was surprised and disappointed to find that there were only nine who kept a systematic record. There are over twenty now. I have been informed by attorneys who are conversant with the practices of lawyers generally in various states that there has been a substantial increase in the last four or five years in the number of lawyers practicing solo or in firms who are now keeping systematic time records, comparable to the increase of that practice among the Texas firms just referred to. My guess is that there has been such an increase, or perhaps a greater one, in New York in recent years; but that among solo practitioners, especially, there is a crying need for better system.

The lawyer who practices solo or in partnership who does not keep such a record simply is missing one of his largest factors of public relations with reference to demonstrating to his clients the reasonableness of his charges whenever occasion for discussion of any fee as charged does arise. A client that believes his lawyer picked the fee that he is charged out of the air is an unhappy client. Of course there are exceptions. Of course I am not advocating that all lawyers go on a time basis and charge so much a minute or so much an hour or adopt any other standard applicable to every situation. But I am advocating that every lawyer keep a record of how many hours or parts of hours were devoted to each professional service that he renders every day and that the lawyer who dictates the bill for that service know what service has been rendered and at what expense in time of what lawyer or lawyers (and hence necessarily of overhead) has been involved in the service rendered before he determines the amount to be charged. Then he can demonstrate to the client what the service was from the standpoint of that which the lawyer has chiefly to sell—his time in the light of his professional experience and training.

The four page circular of the Wisconsin Bar above mentioned suggested a method for using the summaries prepared from daily

time sheets. Other valuable suggestions are to be found in the available literature on the subject referred to in the bibliography at the end of this article. Practices and policies reasonably differ depending on many differing circumstances. In the light of suggestions showing what others are doing, each lawyer can readily determine for himself how best to use his time records and, of course, during the first year or so of their use may readily find by trial-and-error methods how to improve that use.

Rather than to discuss any such detail I am limiting this paper to a discussion of the single point that every lawyer, in his own way and for his own protection against his own forgetfulness and errors of judgment as to how much time and effort he or others in his office have devoted to a service, really must maintain a systematic time record. A necessary corollary to this is that every lawyer with a partner will find it much easier to convince himself that the daily chore of preparing the time record each day while every matter is fresh on his mind is an important one, than will the lawyer who practices solo. This is another and an important reason why the same man with a partner will probably make more money quite properly and justifiably and quite fairly to every client than he will if practicing alone.

Lawyers who are not making daily time records and preserving and analyzing them, are ignoring essential financial aspects of their own practice. This, it seems to me, is made clear by the statistics quoted in this article.

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